IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7664 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARENDRA BABULAL AGRAVAT

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 7664 of 1990

MR MUKESH H RATHOD for Petitioner No. 1-7

MR PV HATHI for Respondent No. 1,3

Mr. K.P. Raval, AGP for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/08/2004

ORAL JUDGEMENT

1.1 The petitioners by way of this petition has

approached this Court seeking a direction to the respondent no.1 to consider the case of the petitioners on similar line as was done by the State Government by order dated 25-10-1985 and to appoint the petitioners to the post of M.H.W and for a further direction to the respondent no.2 to transfer the waiting list of persons amongst 56 persons appointed by the said order. A prayer is also made to the effect that the respondents be directed to appoint the petitioners as Malaria Health Workers (MHWs).

1.2 The petitioners nos.1 and 2 are stated to have been already appointed, and hence, the petition qua the petitioners nos.1 and 2 are disposed of as having been not pressed.

2.1 Briefly stated, the facts of the case are that the petitioners were working as Supervisor Field Workers (SFWs) since 1978 in the office of the District Panchayat. In the year 1981 the State Government had prepared a waiting list of SFWs wherein the name of the petitioners also appeared. Thereafter, vide appointment order dated 25-10-1985 the State Government had appointed 56 SFWs to the post of Malariya Servelens Workers and they have now been made permanent. Thereafter, the District Service Selection Commission, Jamnagar had vide advertisement dated 2-7-1990 invited applications for the post of Multipurpose Health Workers (MHWs).

2.2 The petitioners applied for the post of MHW but none of them having been called for oral interview, the petitioners served legal notice to the respondents in reply whereof they were informed that the State Government had passed Resolution effecting transfer of the waiting list to the District Panchayat. It is the case of the petitioner that their names appeared in the said waiting list which is still not cancelled and they possess the requisite qualifications and experience, and therefore, they should be treated at par with the persons appointed vide order dated 25-10-1985, but the respondent no.1 had not selected the petitioners and had appointed other candidates against the said advertisement.

3.1 Mr. Rathod, learned Counsel for the petitioners submitted that the petitioners nos.3 to 7 are similarly situated as the petitioners nos.1 and 2 who have already been appointed as MHW at Junagadh District and Rajkot District respectively as per the affidavit-in-reply filed by the respondents nos.1 and 3 dated 24-5-2004 pursuant to a subsequent advertisement issued by the District Panchayat on 1-10-1994. Moreover, Mr. Rathod has relied

on the Government Resolution of August, 1992 produced at Annexure `I' to the affidavit-in-rejoinder dated 16th July, 2004 (at page 43 of the paperbook). It is also contended by Mr. Rathod that the petitioners nos.1 and 2 were appointed giving them relaxation in age as per the statement made in the said affidavit-in-rejoinder.

4.1 As against that Mr. Hathi, learned Counsel for the respondent has submitted that at the time when the subsequent advertisement dated 1st October, 1994 was issued the petitioners nos.3 to 7 were not found eligible for appointment as they were not fulfilling any of the requirements regarding age and educational qualifications on account of which they were not called for interview though they had applied.

5.1 Now, in this case, in view of the Government Resolution of August 1992 and considering the fact that the affidavit in rejoinder filed by the petitioner dated 16th July, 2004 according to which the petitioners nos.1 and 2 came to be appointed giving them age relaxation which has remained uncontroverted, I am of the opinion that it will be in the interest of justice, if the petitioners nos.3 to 7 claim for appointment to the post of MHW be considered sympathetically by the authorities upon an application being made by the petitioners.

6.1 In the premises as aforesaid, the petition is partly allowed. It is hereby directed that the petitioners nos.3 to 7 shall make a representation to the respondents-authorities within one month from the date of receipt of this order, and the respondents-authorities shall decide the claim of the said petitioners for appointment to the post of MHWs on merits and in accordance with law in the light of the Government eligible except age limit for which age relaxation be eligible except age limit for which relaxation may be given. Rule is made absolute to the aforesaid extent.

(K.S.Jhaveri,J.)

stanley-ksj.